

Asa Carl Swindell
277 SE 16TH ct
Troutdale OR
97060

FILED 24 FEB '16 14:41 USDC-ORP

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

(Write the District and Division, if any, of
the court in which the complaint is filed.)

CARL ASA SWINDELL

Michael Alan McVahle

(Write the full name of each plaintiff who is filing
this complaint. If the names of all the plaintiffs
cannot fit in the space above, please write "see
attached" in the space and attach an additional
page with the full list of names.)

-against-

MULTNOMAH COUNTY COURTS; STATE
OF OREGON COURT OF
APPEALS

(Write the full name of each defendant who is
being sued. If the names of all the defendants
cannot fit in the space above, please write "see
attached" in the space and attach an additional
page with the full list of names.)

Complaint and Request For
Injunction

Case No. 3'16 CV-0341 SI
(to be filled in by the Clerk's Office)

I. The Parties to This Complaint**A. The Plaintiffs**

Provide the information below for each plaintiff named in this complaint. Attach additional pages if needed.

Name	Asa Carl Swindell
Street Address	None
Mailing Address	277 SE 16 th Ct
City and County	Troutdale, Multnomah
State and Zip Code	Or, 97060
Telephone Number	503-206-1530
E-mail Address	carlfriends@yahoo.com

Name	Michael Alan McVahle
Street Address	None
Mailing Address	277 Se 16 th Ct.
City and County	Troutdale, Multnomah
State and Zip Code	OR, 97060
Telephone Number	971-207-9355
E-mail Address	whitewaterpoet@yahoo.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the persons job or tittle (if known). Attach additional pages if needed.

Defendant No. 1

Name	Multnomah County Courts
Job or tittle	N/A
Street Address	1201 S.W. Fourth Ave.
City and County	Portland, Multnomah
State and Zip	Oregon, 97204-1123
Telephone Number	503-988-3957

Defendant Number 2

Name	State of Oregon Court of Appeals
Job or Tittle	N/A
Street Address	1163 State Street
City and County	Salem, Marion
State and Zip	OR, 979301
Telephone Number	(503) 986-5566

Defendant Number 3

Name	No Additional Defendants at this time
Job or Tittle	
Street address	

b. If the Defendant is a corporation

The Defendant, (name) _____, is
incorporated under the laws of the State of (name)
_____, and has its principle place of
business in the State of (name) _____. Or is
incorporated under the laws of (foreign nation)
_____, and has its principle place of
business in (name) _____.

3 The Amount in Controversy

The amount in controversy is \$0 in this action.

III. Statement of Claim

We were evicted from our apartment on a no cause eviction even though We are disabled and no reasonable accommodation was attempted to keep us within my home and community. We were denied the appointment of attorney and never received a competency hearing or a proper answer containing the elements required by the Ada and multiple supreme court decisions. We lost that hearing in January 2015 (No. 14LT07422). We are now appealing that loss, Swindell v. Lents Strategies, LLC, (No. A1587840), and we requested assistance under the Americans with Disabilities Act in order to preserve our rights. The Multnomah County Courts and the Court of Appeals refused to comply with the ADA and refused to provide us with accommodations needed to handle the appeal. We are worried we will lose the appeal and we will never again get a place to live again if we do not receive assistance. We are disabled because

we have cognitive impairments and someone else wrote this for us to file. It is important to us that we have someone listen to our case, and we would like a federal judge to issue an injunction to require the Oregon courts to follow the disabilities law and to treat people like us fairly.

B. What date and approximate time did the events giving rise to your claims occur?

Trial in Multnomah County FED Court, First Appearance January 6th 2015,

Judgment rendered January 26th, 2015, currently on appeal.

Order issued in Oregon State Court of appeals February 2nd, 2016.

C. What are the facts underlying your claims?

Both Plaintiffs are cognitively disabled. Mr. Swindell was adjudicated incompetent in Multnomah County Circuit Court by Judge Harl Haus. Mr. Swindell has been receiving SSI for 23 years for cognitive disabilities. Mr. McVahle suffers from Repetitive Concussion syndrome, Seizures, Tremors, and Anorexia, among other conditions. The landlords knew or had reason to know of our disabilities, but brought an illegal action for possession based on an insufficient notice to correct a non-violation of the lease, stating a no cause eviction as the consequence for non-compliance with their illegal demand. They then followed with a no Cause eviction served and dated within the statutorily required 14 days to correct or dispute. No attempts at reaching a reasonable accommodation were made at any time. At trial, we requested, as a reasonable accommodation for our cognitive disabilities, the appointment of an attorney to preserve and defend our rights. The court declined to either grant our request or to make an answer to us that complied with the requirements of the ADA. The judgment was entered against us, and we appealed to the Oregon State Court of Appeals, and again requested the appointment of an attorney as a reasonable accommodation. Again, there were no substantial attempts to either grant our accommodation, offer an alternative, or to provide us with an answer that met the

requirements of the Ada.

IV. Irreparable Injury

Explain why monetary damages at a later time would not adequately compensate you for the injuries you are sustaining, or will sustain as a result of the events described above, or why such compensation could not be measured.

We will lose our appeal, and quite frankly, do not have the emotional energy left to continue the fight on our own anymore. We will never have our claims fairly heard, our rights will be forever lost. Our Damages will never be compensated.

We are both sick, disabled, and homeless. We may not survive, living on the streets, long enough to make it through this appeal, let alone another drawn out trial for damages. This is literally do or die for us. Mr. McVahle's seizures are life threatening events in and of themselves, and that risk is significantly increased when they occur out on the streets.

V. Relief

Please order the Multnomah County Circuit Court and/or the Court of Appeals to provide us with the assistance of a writer or lawyer to help us with preparing our appeal.

VI. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, we certify to the best of our knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a non frivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if

specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I/We agree to provide the Clerks Office with any changes to my address where any case-related papers may be served. I/We understand that our failure to keep a current address on file with the Clerks Office may result in the dismissal of our case.

Date of Signing: February 22nd, 2016

Signature of Plaintiff: Asa Swindell

Printed Name of Plaintiff: Asa Carl Swindell

Signature of Plaintiff: Michael Alan McVahle

Printed Name of Plaintiff: Michael Alan McVahle

Swindell's Attachment

UNITED STATES DISTRICT COURT

**ATTACHMENT TO REQUEST TO INJUNCTIVE RELIEF
CASE#**

Prayer for Injunctive Relief

State of Oregon Court of Appeals and Multnomah County Court ordered to appear to defend Swindell's accusations that his civil rights have routinely been violated through **Systemic Judicial deference and Bad-Faith Conciliation and Dilatory Tactics.**

For the Plaintiffs to defend why by their default in not following ADA requirements, they should not immediately provide acquire Representation for Swindell. Defendants have refused to follow required procedures mandated by law, Swindell request Court order Defendants to appear and defend whether the Defendants findings of fact, and their application of those findings of fact were to the correct legal standard, were illogical, implausible, or without support in inferences that may be drawn from facts in the record. And why Swindell should not be appointed as he requested as a reasonable accommodation under the ADA Act. Representation by a Qualified Attorney as no other options of reasonable accommodations were offered upon repeated requests.

A stay of all actions until such time collateral issues in this case are resolved and Swindell's legal rights are protected.

I ASA Swindell ask as a reasonable accommodation to attach this statement to clarify some understanding that may be missed and not expressed in US district Court injunction application;

The issues here are substantial. I am cognitive disabled. Under casual circumstances I communicate very well. As you can see I am capable, and this is confusing, I have above average intelligence as well as Mr. McVhale co plaintiff. The thought process is above my understanding. I know I have over 2,000 hours invested in this case in search of understanding the issues. I am not a political activist I have been a recluse for 21 years. Whoever takes part in this case will have a rare look into the mind and experiences of the mentally ill. I am very rare that I can still express what I witness and have good memory. I have kept all, documentation, correspondence, photos, witness, dates times and places. I cooperate follow instructions, and understand arguments. Here in is the catch! I cannot formulate them. If you have a list of post a notes in order formulating a understanding and remove one, I can't find it, when it is in front of me. I know what it is, I just can't connect it. This is frustrating to observe but horrible to live

with. With a short time to focus I will figure it out but the conversation has moved on and I panic.

The following a sample of what I can do under controlled conditions.

THE FOLLOWING STATEMENT IS RESPONSE TO AND IS PART OF REQUESTS FOR REASONABLE ACCOMADATION WITH THE DEFENDENTS. FILED 11/25/2016.

Statement of Respondent-Appellant Swindell supporting this request;

I have been adjudicated incompetent. I recognize that I do have cognitive Disabilities. These have been described and substantiated in previous filings. They are not questionable. They prevent me from effectively defending my own rights.

I did not want to go to court. Mr. McVahle convinced me that the eviction being performed on us was illegal, and that it would be a simple matter to defend against it. I allowed myself to be convinced, and found out we were wrong. Not about the law or about whether or not we should be evicted, but about if we could handle it without an attorney.

We requested an attorney from the outset. Simply reading the first 20 pages of my testimony and argument in the FED court will demonstrate that, beyond any doubt, I was incompetent. I am a conscript. I have been drug in to court to defend my rights, while blindfolded (We do not, as pro se litigants, have the same research capabilities as a lawyer), and muzzled (I cannot effectively communicate my thoughts and arguments).

I have, so far, been represented by my co-litigant, Mr. McVahle. Initially I believed in his ability to conduct our case, despite knowing of his own mental disabilities. I no longer, after watching his performance in the original court, have any hope of his ability of his assistance to obtain meaningful results in this court, and his declining mental, physical and emotional state since becoming homeless, feel that he is qualified to represent me.

I also, after all of my years of experience as a cognitively disabled adult, have no wish to even attempt to represent myself. In fact, I no longer wish to make any statements without the advice of an attorney, as every time I do I get into trouble of some sort.

Over the years I have felt the burden of the same stigma that this court has placed upon me – upon us. The court seems to assume that if we are incompetent, we are too stupid to do basic tasks. And that if we can perform those basic tasks, we are not legally incompetent and do not require any assistance or protection. So the choice before us is to either accept that we are not disabled (a ludicrous notion) or that we are stupid. HOW INSULTING!

Compare me to a person in a wheelchair in a building without an elevator. You are telling me that I can drag my paralyzed body up the stairs by strength of arm, and you will carry the wheelchair. What you discount is the likelihood that I will slip, and injure myself falling down those stairs, or that I will then be late and miss the call to my court case and lose my right to be heard. (this actually happened in an ADA appealed case)

I, Asa Swindell am appealing the decision, DENIAL OF REQUEST FOR APPOINTMENT OF ATTORNEY dated 11/25/2015 signed by James W. Nass, Appellate Commissioner. I no longer and never have accepted Michel McVahle as my legal representative. Mr. McVahle was conscripted into the position. He was my caretaker at the time of our eviction. He believed FED court is an expedited court and with our substantial evidence of all the code violations, primarily no exterior lights on a 3 story walk up with all disabled and elderly on 3 floor, for over at least 4 months of our tenancy from august 2014 to January 2015, and only one exit the front stairs left no lighted fire escape. Raymond Swindell, my developmentally disabled Nephew, was abducted in October 2014 due to the lighting not working. Ray was found approx. March 2015 and is in protective custody to this day.

I have requested accommodations from the landlord and courts since before trial. The mere fact we had a 3 day FED trial should have been a red flag of a substantial problem. I was adjudicated mentally incompetent in 1994. I gave you, and is a matter of record, a copy of my psychiatric determination; you have my indigent filing showing I am on SSDI and have been 21 years. I am 64 years old suffered tumors and, traumatic head injuries, mental illness. I am currently homeless I simply wish to restate information in my previous request you have on record refer to them.

Mr. McVahle and I are far more ill since our eviction and under extreme living conditions. No Doctor, mental health professional, or councilor or observer would ever testify I or Mr. McVahle would had been or ever will be able to represent myself (ourselves) in a court or many other circumstances.

You have the transcript. Read it; you won't need to go far. As to my ability to write and in my writing communicate as well as I do, I have had a horrible struggle of the past 13 months. If Mr. McVahle and I were capable of protecting our rights, would we had a 3 day FED trial and not prevailed? Would it take 9 months to do a simple FED appeal? Why would not one Attorney accept our case when they did not know of our indigent Status? Once the words FED and Civil Rights were mentioned the conversation abruptly ended. We tried everywhere for representation.

It is offensive to me that you insist that because I can do some things well, I should be able to do other things equally as well. That question has kept me a recluse for 21 years and got me in trouble. I have struggled with that question and sought an answer far harder than you can imagine. I am frustrated, ashamed and disgusted with myself I do not understand how what has happened to me, and you press me for an answer I cannot find.

From Wikipedia, the free encyclopedia

Savant syndrome

Savant syndrome is a condition in which a person with a mental disability, such as an autism spectrum disorder, demonstrates profound and prodigious capacities or abilities far in excess of what would be considered normal.

Another form of savant syndrome is acquired savant syndrome, in which a person acquires prodigious capabilities or skills following dementia, a head injury or severe blow to the head, or other disturbance No widely accepted cognitive theory explains savants' combination of talent and deficit.

Psychological [edit]

No widely accepted cognitive theory explains savants' combination of talent and deficit.^[15] It has been suggested that individuals with autism are biased towards detail-focused processing and that this cognitive style predisposes individuals either with or without autism to savant talents.^[16] Another hypothesis is that savants hyper-systemize, thereby giving an impression of talent. Hyper-systemizing is an extreme state in the empathizing–systemizing theory that classifies people based on their skills in empathizing with others versus systemizing facts about the external world.^[17] Also, the attention to detail of savants is a consequence of enhanced perception or sensory hypersensitivity in these unique individuals.[17][18] It has also been confirmed that some savants operate by directly accessing low-level, less-processed information that exists in all human brains that is not normally available to conscious awareness.^[19]

Neurological [edit]

Savant syndrome results from damage to the left anterior temporal lobe, an area of the brain key in processing sensory input, recognizing objects and forming visual memories.^[citation needed] Savant syndrome has been artificially replicated using transcranial magnetic stimulation to temporarily disable this area of the brain.^[20]

Child prodigy

From Wikipedia, the free encyclopedia

In psychology research literature, the term **child prodigy** is defined as person under the age of ten who produces meaningful output in some domain to the level

of an adult expert performer.[1][2][3] Child prodigies are rare; and, in some domains, there are no child prodigies at all. Prodigiousness in childhood does not always predict adult eminence.

Would anyone come to a conclusion based upon the talents only that persons with **Savant syndrome** or a **child prodigy** to act as his own **Lawyer** or a **Brain surgeon**?

When anyone discovers an answer I can leverage to my benefit, I may find some peace.

I have never been, or would hope to ever be, so offensive to skilled, trained educated, experienced professionals who have sacrificed so much to achieve accreditation's and experiences as to discredit and insult them by comparing information I acquire by the internet to be able to displace their accreditation's, experience, knowledge, and skills things I assume you believe I have, to theirs. (This implication should be embarrassing if true we know what this implies). I simply research so I can demonstrate respect, be able to assist, and cooperate so as not to frustrate those attempting to communicate with me. So I can assist them efficiently giving them reason to hope that my situation and their valuable assistance is to come to a profitable end. I present my discoveries as a request for conformation not to attempt to educate, only to clarify. How can I do that when no one seems to know the subject in any depth? Or is playing ignorant, and refuses to address in any meaningful way, my confusion and help me understand.

I do not understand confrontational argument, confrontation with my mental health issues has been avoided at almost all costs, only clarification and understanding and when I achieve this I can live with "it is what it is".

This case involves our civil rights (substantial rights) as well other rights and claims arriving out of these same circumstances.

There is glaring misconduct, systemic confusion, deception, negligence if not outright obstruction of due process by the State of Oregon and the DOJ. If you're disabled and are foolish enough to believe you can seek out an ADA coordinator and get meaningful assistance, or an advocate to mediate on your behalf for meaningful accommodation, it becomes abundantly clear, you better not need them because they don't need you! as the ADA coordinator represents the states interest, not the disabled. The built in hassle factor of systemic confusion, deception, incompetence, negligence, disdain for the mentally ill frustrates the mission of the ADA, and the Congressional mandated necessity of assistance of the disabled who above all seek hope and help.

I do not expect anyone to work without just compensation. It is an affront to my personal convictions, as it is written "to rob a man of his wages is to rob god & thou shall not muzzle the ox". Any qualified attorney will easily see with just a

cursory review of the transcript that the Appeal will be found clearly in our favor. If it were shown to me otherwise, I would, without a doubt stop. Following the conclusion of this appeal we will continue to require assistance and reasonable accommodations to pursue those other claims and defend our substantial civil rights in other actions arising from the same circumstances.

The attorney who does represent us in this appeal will be the logical choice to continue that representation with the reasonable expectation of potentially substantial compensation. Show our case to a qualified attorney as a requested favor or whatever. It will be clear they will be paid as the prevailing party. Show it to community organizations or people you network with.

I do not agree to be represented by Mr. McVahle. He has demonstrated a lack of ability to act as an attorney, having lost every round to date. I have watched his mental state deteriorate over the 8 months of homelessness and through the effects of at least 5 concussions in that time.

That being said, I have read Mr. McVahle's portion of this pleading and I agree and endorse it.

Dated 30 December, 2015

That the Plaintiffs, Gresham, Multnomah County and State, practices Judicial deference a doctrine by which all cities counties, State of Oregon, and their courts sublimates. (*Definition; to divert the expression of (an instinctual desire or impulse) from its unacceptable form to one that is considered more socially or culturally acceptable*) Inquiry is confined to the question of whether any agency's interpretation of any and all statutes in their aggregate or standing alone are "inconsistent with [the] statutory mandate or . frustrate[s] the congressional policy underlying a statute.

These violations are systemic, done purposely as all actors except the victim, have privileged knowledge and their fore a greater duty of care and cannot claim ignorance and acerbates their unconscious able acts. I cannot compete with the power of the State and municipalities.

Swindell if accused of a crime he would be entitled to representation, Swindell claims the same under the ADA act as well as other laws or at least a guardian pro tem.

Bad-Faith Conciliation and Dilatory Tactics (tending or intended to create a delay or put off reaching a decision) are used to frustrate[s] the congressional policy underlying a statute. Denying procedural fair play, and undue delay, in fact, used to circumvent procedural rules, delay its investigations and to maintain inflexible in its negotiations.

The issue of the right to representation has been ongoing for 15 months and delays are endangering future rights with statute of limitations in related unresolved issues resulting out of the circumstances. The failure of the court and State actions of Bad-Faith Conciliation and Dilatory Tactics, Judicial deference, failure to follow State and Federal laws, and by default, and their dirty hands require that my

accommodations request of an attorney be granted as a matter of law and Congressional mandate.

Due process that requires fundamental fairness;

The government, like its citizens, must follow the law. The Oregon Departments of JUSTICE AS WELL AS ALL OTHERS must respect the ADA ACT and all related Statutes, administrative schemes, and follow the “clearly delineated paths to justice” that Congress has created. these decisions signal that the government must make reasonable efforts to conciliate in good faith with , by providing notice of the underlying challenged practice and responding in a “reasonable and flexible manner”., the government may not protract the investigative process for years As Swindell a ledges now.

Defendant Swindell claims he is unable due to his disability to formulate, prepare, understand process procedures, present them in a coherent fashion, effectively Strategize, and plan,. This is obvious to any observer look at his current condition and ongoing abuse. What kind of a demonstration of a plan is this? in light of this any further argument is ludicrous.

Any attempt of self representation would waste court time and resources, as well may well leave Swindell in a position of appearing to mock skilled Officers of the Court as well as other professionals, who have invested so much to have anyone of my person imply he could do remotely as well. I admit I am mentally ill not stupid. This is offensive to me, for anyone to think I have such lack of recognition and respect as not to appreciate a doctor, nurse, litigator, Judge, Police Officer or any other learned tradesman or professionals. I understand courts are adversarial I am not. Is the State my adversary? Why? I just want to exist somewhere and understand what I should do that will appease everyone or satisfy them. Write out clear instructions so I can be in compliance and not pursued and a nuisance.

Standing; Swindell claims facts stated here have met the requirements:

Injury-in-fact: The plaintiff must have suffered or imminently will suffer injury—an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent (that is, neither conjectural nor hypothetical; not abstract). The injury can be either economic, non-economic, or both.

Causation: There must be a causal connection between the injury and the conduct complained of, so that the injury is fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party who is not before the court.^[36]

Redressability: It must be likely, as opposed to merely speculative, that a favorable court decision will redress the injury.

Prohibition of generalized grievances, Swindell's claims are Specific.

Swindell for 14 months has sought representation and accommodations to exhaustion

The Defendant has shown a strong or substantial likelihood of success on the merits; that his rights must be protected with counsel as it is established he has been unable to do on his own to any meaningful results in part, by indifference of the Plaintiffs taking advantage of cognitive disabilities known at all times by them.

That irreparable harm has been and will be continued without an injunction;
Issuance of a preliminary injunction will not result in substantial harm to others.

Swindell is directly harmed by the conditions by which he is petitioning the court for the harm involved has reasonable relation to the situation, and the continued existence of the harm may affect others who might not be able to ask a court for relief.– the so-called "chilling effects" doctrine.

The public interest is advanced by the injunction. Being denied the benefits of, or being subjected to discrimination by reason of his disability. He will be irreparably harmed if a preliminary injunction is not issued. it is evident that money could not replace the rights he would lose if unable to have representation.

The Court should conclude that issuance of a preliminary injunction will not result in substantial harm to others. In fact it is the most cost effective. The Court will retain jurisdiction over this matter in the event that any further problems arise which are unrelated to her disability, or which cannot be reasonably

It is the purpose of both the ADA and the Rehabilitation Act to provide a coherent framework and consistent and enforceable standards for the elimination of discrimination against individuals with disabilities. 42 U.S.C. § 12101(b)(1) and (2); 29 U.S.C. § 701. Such discrimination may be manifested in a variety of forms, including in the form of the rigid application of rules and policies, found in this case, which operates unreasonably to exclude an otherwise qualified individual from receiving the benefits of a reasonable accommodation . The Court should conclude that there is a significant public interest in eliminating discrimination against individuals with disabilities, and that such public interest is advanced by issuing an injunction against The Plaintiffs City of Gresham and The Multnomah County Courts ordering immediate representation. After a careful balancing of the -mentioned factors, the Court should find that they weigh in favor of granting a preliminary injunction.

Swindell claims Laws and regulations are intentionally kept under a certain status or punishment, to not allow victims of the here stated abuses to request legal representation which it is due them. That this practice is to defeat the accused their 14 th amendment and other rights and rights under ADA ACT. Allowing non criminal acts to be used to punish and abuse the undefended, as if they were criminals limiting Life liberty and the pursuit of anything meaningful to the abused. If the accused were defended perpetrators actions would brought under proper oversight,

to the appointment of counsel for appellant, subdivision (a) of CPLR 1102 provides that "The court in its order permitting a person to proceed as a poor person may assign an attorney." Court decisions under the similar predecessor provision of the Rules of Civil Practice held that failure to assign counsel made the order defective (*Matter of Hawkins v. Hotel Statler*, 258 App. Div. 818; *Schechter v. Lichtenstein*, 223 App. Div. 60, 61; *Pankawicus v. Nichols Copper Co.*, 169 App. Div. 419, 420). On the other hand, the Sixth Report to the Legislature by the Senate Finance Committee relative to the revision of the Civil Practice Act calls attention to the use of the word "may" in subdivision (a) of CPLR 1102 and the intent to make appointment of an attorney discretionary (6th Report, N.Y. Legis. Doc., 1962, No. 8, p. 173). Be that as it may, the right of an indigent tenant to assigned counsel under the 14th Amendment of the United States Constitution, to defend his right to remain in possession of his dwelling is forcefully indicated by recent rulings of the United States Supreme Court

(*Boddie v. Connecticut*, 401 U.S. 371, *supra*; *Tate v. Short*, 401 U.S. 395; see, also, *Rodriguez v. Rosenblatt*, 58 N.J. 281; *Griffin v. Illinois*, 351 U.S. 12; *Jeffreys v. Jeffreys*, 58 Misc.2d 1045, *supra*; *Tehan v. Shott*, 382 U.S. 406, 416).

Absent counsel, there is evident possibility of unfairness in the disparate expertise of landlord's attorney and that of the tenant appearing in person.

As Mr. Justice HARLAN wrote for the United States Supreme Court in *Boddie v. Connecticut* (*supra*, p. 377): "Prior cases establish, first, that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. Early in our jurisprudence, this Court voiced the doctrine that '[w]herever one is assailed in his person or his property, there he may defend.' *Windsor v. McVeigh*, 93 U.S. 274, 277 (1876)." *836836

Mr. Justice DOUGLAS, concurring, observed (p. 383): "*Griffin* has had a sturdy growth. 'Our decisions for more than a decade now have made clear that differences in access to the instruments needed to vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution.' *Roberts v. La Vallee*, 389 U.S. 40, 42."

He noted thereafter (p. 386): "Here the invidious discrimination is based on one of the guidelines: *poverty*." As a "matter of simple justice, no indigent defendant should be subjected to * * * consequence of magnitude without first having had due and fair opportunity to have counsel assigned without cost." (*Rodriguez v. Rosenblatt*, *supra*, N.Y.L.J., May 27, 1971, pp. 1, 5, col. 2.)

If, however, counsel is available to tenant through a public or semi-public agency, tenant should be relegated to such an agency (*People ex rel. Baumgart v. Martin*, 9 N.Y.2d 351, *supra*; *Slawek v. United States*, 413 F.2d 957, *supra*).

The issue of assignment of counsel is accordingly also remanded to the court below, to explore the legal facilities available to tenant. If such facilities are not available to tenant, counsel shall be assigned to her by the court below.

Congress' finding that

"individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society." 42 U. S. C. §12101(a)(7).

These rights include some, like the right of access to the courts at issue in this case, that are protected by the Due Process Clause of the Fourteenth Amendment. The Due Process Clause and the Confrontation Clause of the Sixth Amendment, as applied to the States via the Fourteenth

The Due Process Clause also requires the States to afford certain civil litigants a "meaningful opportunity to be heard" by removing obstacles to their full participation in judicial proceedings. *Boddie v. Connecticut*, 401 U. S. 371, 379(1971); *M. L. B. v. S. L. J.*, 519 U. S. 102 (1996).

). The decisions of other courts, too, document a pattern of unequal treatment in the administration of a wide range of public services, programs,

and activities, including the penal system,¹¹ public education,¹² and voting.¹³ Notably, these decisions also demonstrate a pattern of unconstitutional treatment in the administration of justice.¹⁴

This pattern of disability discrimination persisted despite several federal and state legislative efforts to address it. In the deliberations that led up to the enactment of the ADA, Congress identified important shortcomings in existing laws that rendered them "inadequate to address the pervasive problems of discrimination that people with disabilities are facing." S. Rep. No. 101-116, at 18. See also H. R. Rep. No. 101-485, pt. 2, at 47.¹⁵ It also uncovered further evidence of those shortcomings, in the form of hundreds of examples of unequal treatment of persons with disabilities by States and their political subdivisions. See *Garrett*, 531 U. S., at 379 (Breyer, J., dissenting). See also *id.*, at 391 (App. C to opinion of Breyer, J., dissenting). As the Court's opinion in *Garrett* observed, the "overwhelming majority" of these examples concerned discrimination in the administration of public programs and services. *Id.*, at 371, n. 7; Government's Lodging in *Garrett*, O. T. 2000, No. 99-1240 (available in Clerk of Court's case file). Congress' chosen remedy for the pattern of exclusion and discrimination described above, Title II's requirement of program accessibility, is congruent and proportional to its object of enforcing the right of access to the courts. The unequal treatment of disabled persons in the administration of judicial services has a long history, and has persisted despite several legislative efforts to remedy the problem of disability discrimination. Faced with considerable evidence of the shortcomings of previous legislative responses, Congress was justified in concluding that this "difficult and intractable proble[m]" warranted "added prophylactic measures in response." *Hibbs*, 538 U. S., at 737 (internal quotation marks omitted).

The remedy Congress chose is nevertheless a limited one. Recognizing that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion.

Title II's affirmative obligation to accommodate persons with disabilities in the administration of justice cannot be said to be "so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior." *Boerne*, 521 U. S., at 532; *Kimel*, 528 U. S., at 86.²⁴ It is, rather, a reasonable prophylactic measure, reasonably targeted to a legitimate end.

The Americans with Disabilities Act of 1990 (ADA or Act), 42 U. S. C. §§12101-12213, is a measure expected to advance equal-citizenship stature for persons with disabilities. See Bagenstos, Subordination, Stigma, and "Disability," 86 Va. L. Rev. 397, 471 (2000) (ADA aims both to "guarante[e] a baseline of equal citizenship by protecting against stigma and systematic exclusion from public and private opportunities,

"I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Asa Carl Swindell

February 2015

Signature of Tenant 1

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